

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DAIRY, LLC, a Delaware Limited  
Liability Company,

Plaintiff,

v.

MILK MOOVEMENT, INC., a foreign  
Corporation, and MILK MOOVEMENT,  
LLC, a Delaware Limited  
Liability Company,

Defendants.

No. 2:21-cv-02233 WBS AC

ORDER RE: REQUESTS TO SEAL

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Dairy, LLC initiated this action against Milk  
Moovement, Inc. and Milk Moovement, LLC alleging trade secret  
misappropriation under federal and California law, and  
intentional interference with contractual relations. (First Am.  
Compl. (Docket No. 48).) Before the court are (1) Dairy's and  
Milk Moovement's requests to file under seal redacted portions  
the parties' pleadings pertaining to Milk Moovement's motion for  
leave to amend counterclaims (Docket Nos. 205, 225, 234), (2)

1 their requests to file under seal exhibits and portions of  
2 exhibits filed in support of the parties' pleadings (id.), and  
3 (3) Milk Moovement's request to permanently seal Exhibit T filed  
4 in support of Dairy's opposition (Docket No. 228).

5 A party seeking to seal a judicial record bears the  
6 burden of overcoming a strong presumption in favor of public  
7 access. Kamakana v. City & County of Honolulu, 447 F.3d 1172,  
8 1178 (9th Cir. 2006). The party must "articulate compelling  
9 reasons supported by specific factual findings that outweigh the  
10 general history of access and the public policies favoring  
11 disclosure, such as the public interest in understanding the  
12 judicial process." Id. at 1178-79 (citation omitted); see also  
13 Ctr for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1098-  
14 99 (9th Cir. 2016) (explaining that the compelling reasons  
15 standard should apply to all motions which are correlated to the  
16 underlying cause of action). In ruling on a motion to seal, the  
17 court must balance the competing interests of the public and the  
18 party seeking to keep records secret. Kamakana, 477 F.3d at  
19 1179.

20 The Ninth Circuit has recognized that an example of a  
21 compelling reason for sealing records includes "sources of  
22 business information that might harm a litigant's competitive  
23 standing." Ctr. For Auto Safety, 809 F.3d at 1097 (quoting Nixon  
24 v. Warner Commc'ns, Inc., 435 U.S. 539, 598 (1978)); see also  
25 Smith v. United States, 2022 WL 3578568, \*1 (E.D. Cal. Aug. 19,  
26 2022) (explaining that business information may include "pricing,  
27 profit, and customer usage information kept confidential by a  
28 company that could be used to the company's competitive

1 disadvantage").

2 Dairy identifies three specific documents it seeks to  
3 protect: (1) the Software Assignment and Grant-Back License  
4 Agreement between Dairy and United Dairymen of Arizona ("UDA")  
5 (Patchen Decl., Ex. A (Docket No. 224-2)); (2) the Nondisclosure  
6 Agreement between Dairy and UDA (Patchen Decl., Ex. B (Docket No.  
7 224-3)); and (3) the letter sent from Dairy to UDA ("UDA Letter")  
8 which references both the Software Assignment Agreement and the  
9 Nondisclosure Agreement (Hagey Decl., Ex. 10 (Docket No. 204-  
10 12)). (Dairy Req. to Seal at 4.) Dairy states that these  
11 documents include confidential licensing agreements, commercial  
12 arrangements, and business terms and strategies and that  
13 disclosure of its purported confidential information would harm  
14 Dairy's competitive standing. (Id.)

15 This "boilerplate" statement alone does not outweigh  
16 the history of access and public policies favoring disclosure to  
17 the public. A party must still "articulate compelling reasons  
18 supported by specific factual findings." Kamakana, 447 F.3d at  
19 1178. "Simply mentioning a category of privilege, without any  
20 further elaboration or any specific linkage with the documents,  
21 does not satisfy the burden." Id. at 1184. Dairy provides no  
22 further guidance as to what sensitive information these documents  
23 contain that would merit and order sealing the documents from  
24 public view. Therefore, the court must deny Dairy's request to  
25 seal the Software Assignment Agreement, Nondisclosure Agreement,  
26 and UDA Letter without prejudice. The court will consider a more  
27 tailored request which identifies the specific information to be  
28 redacted or sealed and articulates the bases for redacting or

1 sealing such information.

2           Milk Moovement seeks to permanently seal Exhibit T, an  
3 Excel spreadsheet, which it contends contains "commercially-  
4 sensitive, strategic information, including a recent overview of  
5 its software goals, ongoing projects, budgets, expenses,  
6 financial projections, and overall strategy and decisionmaking."  
7 (Milk Moovement Req. to Permanently Seal at 1.) The request to  
8 permanently seal Exhibit T appears to sufficiently show that  
9 sealing is necessary to protect Milk Moovement's business  
10 information. Accordingly, Milk Moovement's request to  
11 permanently seal Exhibit T will be granted.

12           In addition to the specific documents discussed above,  
13 both parties seek to seal materials designated as "CONFIDENTIAL"  
14 or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" under the  
15 stipulated protective order (Docket Nos. 54 61). As both parties  
16 correctly acknowledge, a confidentiality agreement between the  
17 parties does not per se constitute a compelling reason to seal  
18 documents outweighing the interests of public disclosure and  
19 access. There needs to be an independent basis for sealing or  
20 redacting a document beyond the fact that material is within the  
21 purview of a stipulated protective order.

22           IT IS THEREFORE ORDERED that Milk Moovement's request  
23 to permanently seal Exhibit T (Docket No. 228) be, and the same  
24 hereby is, GRANTED, and said document is ordered SEALED.

25           IT IS FURTHER ORDERED that the requests to seal  
26 redacted portions of Milk Moovement's motion for leave to amend  
27 counterclaims and its reply; exhibits 1 and 2 of the proposed  
28 Second Amended Counterclaims; exhibits 1, 5, 6, 7, 8, 9, 10, 11,

1 13, 14, and 15 of the Declaration of Hagey; Dairy's opposition to  
2 the motion for leave to amend counterclaims; the Declaration of  
3 Patchen; and exhibits A, B, and N of the Declaration of Patchen  
4 (Docket Nos. 205, 225, 234) be, and the same hereby are, DENIED  
5 WITHOUT PREJUDICE.

6 Dated: February 13, 2023



WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE